IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1887 OF 2006

Ravinshankar Ramnaresh Singh.)
Aged about 45 years, R/o.)
B/607, Blue Nyle Pacific)
Enclave, Powai, Mumbai-67.) ... Petitioner.

Versus.

The State of Maharashtra)
(at the instance of Pant)
Nagar Police Station).) ... Respondent.

Shri S.R.Chitnis iwth Shri Rishi Bhuta for the Petitioner.

Shri S.V.More, A.P.P. for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 27th September, 2006.

ORAL JUDGMENT.:

1. Submissions of the learned Counsel appearing for the parties were heard yesterday. The Petitioner is arraigned as an Accused No.10 in a case registered with Pantnagar Police Station on 8th July 2005 at the instance of one Rajendra Wagh for offences under sections 323, 324, 307, 504, 506 (ii), 143, 144, 145, 146 and 147 of the Indian Penal Code. An Application was made by the Petitioner under section 227 of the Code of Civil Procedure, 1973 for discharge. The said application has been rejected by order dated 14th August 2006 by the learned Adhoc Additional Sessions Judge, Mumbai.

2. The allegation of the first informant is that he is working with one Shri Popat Naikar as a cable operator. The business of Shri Popat Naikar is of giving cable television connections. The case is that at about 10.00 a.m. on 8th July 2005, when he reached the office of Shri Popat Naikar, the said Popat Naikar instructed the first informant and two other employees to visit Netaji Nagar for doing wiring work of the cable connection. He has alleged that in a lane in Netaji Nagar, Opposite Mehta Dairy, Shri Tangraj Devendra and other 8 to 10 persons who were working for M/s.City Cable came with sticks in their hands and started abusing the first informant and other employees. When they started running, the accused Tangaraj assaulted the first informant by a knife. One Shri Ganesh Shridhar, a colleague of the first informant, was also injured. According to the first informant the passers by also started running due to fear. Nearby shops were closed down. Thereafter his employer came to the site and he took the first informant and other injured persons to the hospital. The allegation is that there is a rivalry between Shri Popat Naikar and M/s.City Cable and therefore, the persons who were working for M/s.City Cable assaulted the first informant and others.

3. Shri Chitnis, the learned Senior Counsel appearing for the Petitioner submitted that this was a

case where there was absolutely no material to proceed against the Petitioner. He invited my attention to the order of the Sessions Court by which Application for discharge made by the Petitioner was rejected. He placed reliance on the decision of the Apex Court in the case of Union of India v/s. Prafulla Kumar Samal and another [(1979) 3 S.C.C. page 4). He submitted that by way of an afterthought, a supplementary statement of the first informant has been recorded nearly two months after the incident. He pointed out that in the supplementary statement all that is stated is that the Petitioner came to the spot where the incident of assault had taken place and threatened the first informant. He pointed out that according to the supplementary statement, after giving threat, the Petitioner left the spot and the other accused persons came there 15 minutes thereafter and allegedly assaulted the first informant and another. He submitted that as this is a case where no material whatsoever is available against the Petitioner, the order of discharge ought to have been passed.

4. I have considered the submissions. The Sessions Court was dealing with the application made under section 227 of the said Code. In the case of State of M.P. v/s. Mohanlal Soni [(2000) 6 S.C.C. page 338], the Apex Court has held that :

"7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

"11. .....As is evident from the paragraph extracted above if the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by the cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence then the charge can be quashed."

In the case of State of Bihar v/s. Ramesh Singh [(1977) 4 S.C.C. page 39), the Apex Court has held that at the stage of dealing with the Application under section 227 of the Code, the truth and veracity of the of the evidence which the prosecution proposes to adduce is not

to be meticulously judged, nor any weight is to be attached to the probable defence of the accused. At this stage the Court need not to see whether there is sufficient ground for conviction of the accused. But at this stage if there is a strong suspicion which leads the Court to think that there is a ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the Accused. In another decision in the case of Suresh alias Papu Bhudharmal Kalani v/s. State of Maharashtra [(2001) 3 SCC page 703), the Apex Court held that at this stage the Court is not required to appreciate the evidence to conclude whether the material produced is sufficient or not for convicting the accused. The Court has to consider the material with a view to find out if there is a ground for presuming that the accused has committed the offence. The Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. In fact in the decision in the case of Union of India v/s.Prafulla Kumar Samal (supra) relied upon the Petitioner, the Apex Court has held that though the Court is not supposed to act merely as a postman, the Judge should not go into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. The Court has to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

5. In the present case apart from the supplementary statement of the first informant, there is a statement of one Shivkumar alias Tarzan Nariyappa Naikar who is the elder brother of Popat Naikar. He described the rivalry between M/s.City Cable of which the Petitioner is a Director and Shri Popat Naikar. He stated that on the relevant date the petitioner raised objection to the joining of the cable by the first informant and other employees of Popat Naikar and threatened the first informant and other employees of the said Popat Naikar. He has stated that while the Petitioner was leaving, his associates working in City Cable came with sticks etc. One of them viz. Tangaraj assaulted the first informant by knife in his hand. He has specifically stated that at the instance and instigation of the Petitioner his associates assaulted the first informant and others. Even in the statement of Shri Popat Naikar he has stated that on 8th July 2005, the Petitioner gave threat to the first informant and other employees when they were connecting the cable. He has also stated that the assault by the associates of the Petitioner was at the instance and instigation of the Petitioner. In the supplementary statement of the first informant he has narrated the same version. This is not a case where there is no material against the Petitioner as contended by the Petitioner. I have also perused the statements recorded in the cross complaint filed at the instance of

the Petitioner. Reading the material as it is, it is obvious that there is prima-facie case to proceed against the Petitioner. No case is made out for interference. Petition is rejected.

6. It is made clear that the observations made herein are for the limited purpose of considering the prayer for discharge.

Judge.